

REMARKS/ARGUMENTS

Reconsideration of the captioned application as amended herewith is respectfully requested.

This response is being filed concurrently with a **Petition for a One (1) Month Extension of Time**, which would extend the period of response from 13 March 2008 to 13 April 2008. According to 37 CFR 1.7, "[w]hen the day... for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or on a Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding business day, which is not a Saturday, Sunday, or a Federal Holiday." The due date for response to the Office Action, with a one month extension, is 13 April 2008, which fell on a Sunday. The present Response is being filed on Monday, 14 April 2008, which is the next succeeding business day. Thus, Applicants respectfully submit that no additional extension fees are due upon the filing of this Amendment. However, in the event that any additional fees are due as a result of filing this paper, Applicants hereby authorize the Director to charge such fees to Applicants' Deposit Account.

The Office Action:

- a) objected to claim 15 under 37 CFR 1.75(c);
- b) rejected claim 1 under 35 USC §112, second paragraph;
- c) rejected claims 1 – 2 and 5 – 15 under 35 USC §103(a) as being unpatentable over United States Patent Application Publication No. 2004/0241214 in view of United States Patent no. 4,499,896 to Heinecke ("Heinecke");
- d) rejected claims 1 – 15 under 35 USC §103(a) as being unpatentable over Heinecke in view of United States Patent No. 5,759,570 to Arnold ("Arnold");

Claims 3 and 4 were previously cancelled, and claims 1 – 2 and 5 – 15 remain pending in this application after entry of this Response.

Claim 1 was clarified to include that the wound treatment device is comprised of "a water-impermeable envelope, wherein the envelope contains a therapeutic agent [and] wherein the therapeutic agent is retained inside the envelope after the aperture has opened." Support for this language may be found in the Specification as originally filed at, for example, page 7, line 33 – page 8, line 3, and as such does not introduce new matter into the Specification. Applicants'

amendment herein is not a concession or admission that original claim 1 is unpatentable. Applicants reserve the right to prosecute the subject matter of original claim 1 in a continuing application.

Claim 15 stands "objected to under 37 CFR 1.75(c) as [allegedly] being of improper dependent form for failing to further limit the subject matter of a previous claim." Applicants respectfully disagree. Claim 1 is directed to a "wound treatment device..." (emphasis added). By contrast, claim 15 is directed to a " wound dressing comprising a wound treatment device according to claim 1 " (emphasis added). That is, claim 15 is directed to a particular form or embodiment, i.e., a "wound dressing." In view of the use of the open-ended "comprising" language in claim 15, the wound dressing of claim 15 contains the "wound treatment device according to claim 1" and may optionally contain at least one other component. Therefore, because claim 1 is directed to "a wound treatment device" and claim 15 by contrast is directed to a "wound dressing" embodiment, and in view of the above arguments, Applicants respectfully submit that the objection to claim 15 under 37 CFR 1.75(c) has been overcome and should be withdrawn.

In view of the amendment to claim 1, in which the terms "at least" were deleted, Applicants respectfully submit that the rejection of claim 1 under 35 USC §112, second paragraph, has been overcome and should be withdrawn.

II. The Rejection of Claims 1 – 2 and 5 - 15 Under 35 USC §103(a) Over Kirkwood in view of Heinecke Should Be Withdrawn

Claims 1 – 2 and 5 – 15 stand rejected under 35 USC §103(a) as allegedly being anticipated by Kirkwood in view of Heinecke. Applicants respectfully disagree for the reasons that follow.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. MPEP § 2143. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, and not be based on applicant's disclosure. MPEP § 2143; *In re Vaeck*, 947 F.2d 488, 493 (Fed. Cir. 1991).

The Office Action alleges that claims 1 – 2 and 5 - 15 are obvious in light of the combination of the Kirkwood and Heinecke patents. Applicants respectfully disagree because the combination of the Kirkwood and Heinecke patents does not teach, suggest, or otherwise disclose a “a water-impermeable envelope, wherein the envelope contains a therapeutic agent [and] wherein the therapeutic agent is retained inside the envelope after the aperture has opened” (emphasis added), as described in Applicants’ currently amended claim 1.

Kirkwood discloses that the “therapeutic particles... are shaped, sized and distributed such that they can pass through the opened or enlarged apertures.” See Kirkwood, Paragraph 46 (emphasis added). By contrast, claim 1 of the present invention is directed to “a water-impermeable envelope, wherein the envelope contains a therapeutic agent [and] wherein the therapeutic agent is retained inside the envelope after the aperture has opened” (emphasis added). However, the Office Action has failed to show where Kirkwood discloses or suggests that “the therapeutic agent is retained inside the envelope after the aperture has opened” as claimed in claim 1. This deficiency of Kirkwood is not cured by Heinecke, because the Office Action has failed to show where Heinecke discloses or suggests the use of a therapeutic agent, let alone a “therapeutic agent [that] is retained inside the envelope after the aperture has opened.”

Therefore, *assuming arguendo* that there is proper motivation to combine Kirkwood with Heinecke, Applicants respectfully submit that the combination of the cited references would still fail to teach or suggest the invention of claim 1. Thus, Applicants respectfully submit that the Office Action fails to make out a prima facie showing of obviousness, and withdrawal of the rejection of claim 1 under 35 USC §103(a) over Kirkwood in view of Heinecke is respectfully requested. Because the rejection of independent claim 1 is improper and should be withdrawn, the obviousness rejections of all dependent claims related to claim 1 should also be withdrawn and those dependent claims should be allowed. See *In re Fine*, 837 F.2d 1071, 1076 (Fed. Cir. 1988) (a claim depending from a non-obvious independent claim is itself nonobvious).

III. The Rejection of Claims 1 - 15 Under 35 USC §103(a) Over Heinecke in view of Arnold Should Be Withdrawn

Claims 1 - 15 stand rejected under 35 USC §103(a) as allegedly being anticipated by Heinecke in view of Arnold. Applicants respectfully disagree for the reasons that follow.

As set forth in the Office Action, Heinecke fails to disclose

a degradable material blocking the apertures, a therapeutic agent behind the degradable material and dispersed in a

bioerodible substance, and a microorganism-impermeable container.

This deficiency of Heinecke is not cured by Arnold because the Office Action has failed to show where Arnold discloses or suggests that "the therapeutic agent is retained inside the envelope after the aperture has opened" as claimed in claim 1. By contrast, Arnold expressly teaches that "wound healing factors such as cytokines,... glycosaminoglycans and proteins...are retained at the wound site" (emphasis added). See also Arnold, column 2, line 61 - column 3, line 1; column 6, lines 61 - 66; and FIG. 1, element 5 (The "present invention provides an improved wound healing environment at the wound site. It achieves this by retaining at the wound site those wound healing factors....").

Therefore, *assuming arguendo* that there is proper motivation to combine Heinecke with Arnold, Applicants respectfully submit that the combination of the cited references would still fail to teach or suggest the invention of claim 1. Thus, Applicants respectfully submit that the Office Action fails to make out a prima facie showing of obviousness, and withdrawal of the rejection of claim 1 under 35 USC §103(a) over Heinecke in view of Arnold is respectfully requested. Because the rejection of independent claim 1 is improper and should be withdrawn, the obviousness rejections of all dependent claims related to claim 1 should also be withdrawn and those dependent claims should be allowed. See *In re Fine*, 837 F.2d 1071, 1076 (Fed. Cir. 1988) a claim depending from a non-obvious independent claim is itself nonobvious).

Conclusion

It is submitted that the foregoing amendments and remarks place the case in condition for allowance. A notice to that effect is earnestly solicited.

In the event that all of the claims are not in condition for allowance, Applicants respectfully request for an interview with the Examiner before the preparation of the next Office Action.

Respectfully submitted,

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Att:

(1) **Petition for One (1) Month Extension of Time**